

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-28,888

In re: 2808 Gainesville Street, S.E. Unit 2

Ward Eight (8)

VERNON KNIGHT-BEY
Tenant/Appellant/Cross-Appellee

v.

LYNN HENDERSON
Housing Provider/Appellee/Cross-Appellant

REISSUED DECISION AND ORDER¹

January 8, 2013

YOUNG, COMMISSIONER. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH),² based on a petition filed in the Housing Regulation Administration (HRA), District of Columbia Department of Consumer and Regulatory Affairs (DCRA). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of

¹ The Commission inadvertently mailed its Decision and Order to the Housing Provider at an incorrect address. The parties due process rights pursuant to 14 DCMR § 3823.1 (2004), and D.C. OFFICIAL CODE § 42-3502.19 (2001), will begin upon receipt of the reissued Decision and Order.

² The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of DCRA, RACD were transferred to the Department of Housing and Community Development (DHCD), Rental Accommodations Division (RAD) by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008).

Columbia Municipal Regulations, 1 DCMR §§ 2800-2899, 1 DCMR §§ 2920-2941, and 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On January 29, 2007, Vernon Knight-Bey, the tenant (Tenant) of unit number two of the housing accommodation located at 2808 Gainesville Street, S.E. (Housing Accommodation), filed tenant petition (TP) 28,888 with the Office of the Rent Administrator. In his petition the Tenant alleged that his housing provider, Lynn Henderson (Housing Provider): 1) substantially reduced the services and/or facilities provided in connection with his rental unit; and 2) took retaliatory action against him for exercising his rights in violation of section 502 of the Act.

On May 1, 2007, Administrative Law Judge (ALJ) Steven M. Wellner issued a Case Management Order (CMO) scheduling the OAH hearing for May 31, 2007 at 11:30 a.m. The record reflects that the Tenant received notice of the scheduled hearing, by priority mail with delivery confirmation, at his address of record, 2808 Gainesville Street, S.E., Washington, D.C., 20020 on May 2, 2007. Record (R.) at 23. The record further reflects that the CMO was delivered to the Housing Provider, by priority mail with delivery confirmation, on May 2, 2007. The address provided by the Tenant in his TP for the Housing Provider was the address of the Housing Accommodation, 2808 Gainesville Street, S.E., Washington, D.C., 20020. R. at 17.

On June 18, 2007, the ALJ issued his final order. Knight-Bey v. Henderson, RH-TP-07-28,888 (OAH June 18, 2007) (Final Order); R. at 38. The Final Order contained the following findings of fact:

1. The housing accommodation at issue is located at 2808 Gainesville Street, SE, Washington, DC 20020.

2. On January 29, 2007, Vernon Knight-Bey filed Tenant Petition 28,888 alleging, among other things, that (1) services or facilities provided in connection with the housing unit had been substantially reduced; and (2) the housing provider had taken retaliatory action against the tenant in violation of the applicable law.
3. This administrative court mailed a Case Management Order (CMO) to the parties on May 1, 2007, ordering both parties to appear for a hearing on May 31, 2007, at 11:30 a.m. That order stated, in pertinent part, "If you do not appear for the hearing, you may lose the case."
4. The United States Postal Service confirmed that it delivered the CMO to the tenant on May 2, 2007, at 11:25 a.m., and to the housing provider at the same time on the same day. Delivery receipt numbers are 0307 0020 0004 1795 8813 for the tenant and 0307 0020 0004 1795 8820 for the housing provider.
5. Neither party appeared at the scheduled date and time for hearing.

Final Order at 1-2. The ALJ made the following conclusions of law:

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-510, and the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399.
2. The Rental Housing Act of 1985 provides that "notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before commencement of the hearing." D.C. Official Code § 42-3502.16(c). This administrative court verified compliance with § 42-3502.16(c) by confirming delivery (to both parties on May 2, 2007) of the notice of the May 29, 2007, hearing.
3. The applicable OAH rule, 1 DCMR 2818.3, provides:

Unless otherwise required by statute, these Rules or an order of the administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing or a pretrial, settlement or status conference, the presiding Administrative Law Judge may dismiss the case or issue an order of default in accordance with D.C. Superior Court Rule 39-1.

4. Because the tenant failed to appear at the hearing after receiving proper notice, this case is dismissed for failure to prosecute. 1 DCMR 2818.1; see also Mellon Property Mgmt. Co. v. Thomas, TP 23,466 (RHC March 31,

1997)(where tenant petitioner did not appear at hearing petition must be dismissed).

Id. at 2-3, R. at 36-7. The ALJ then dismissed the Tenant's petition with prejudice.

II. ISSUES ON APPEAL

On July 12, 2007, the Tenant filed a notice of appeal in the Commission. On July 18, 2007 the Housing Provider also filed a notice of appeal (cross-appeal). The Commission held its appellate hearing on September 11, 2007. In his notice of appeal the Tenant stated:

I ... was promised by Mr. Lynn Henderson that he would not threaten or harass me about calling inspectors if I don't let them in and give him time to do the work, Mrs. Greta Alimi [sic] also is the one who asked me not to let inspectors in.

On 7/12/07 [sic] before Mr. Leon Weston came to do his inspection Mrs. Alimi [sic] came by asking me not to let him in, I told her no I was letting him in, she was still here when he came and became part of the tour. She also lied on 7/6/07 [sic] when she said all of the work was done in my unit. My no. [sic] 28,888 on my petition. Mr. Weston of housing rehab [sic] specialist [sic] of D.C.R.A., he came to have fix [sic] all she lied and said was already repaired.

Tenant's Notice of Appeal at unnumbered pp. 1-2.

IV. PRELIMINARY ISSUE ON APPEAL

Whether The Tenant Lacks Standing To Challenge The Final Order On The Merits

A party appellant who fails to appear for an adjudicatory hearing does not have standing to challenge the results on appeal. Johnson v. Dorchester House Assocs., LLC, RH-TP-07-29,077 (RHC June 29, 2012); Tenacity Group v. Abshaw, TP 28,486 (RHC Apr. 18, 2012); Jenkins v. Cato, TP 24,487 (RHC Feb. 15, 2000). Any issues raised appealing the Final Order on the merits will be dismissed for lack of standing. Syndor v. Johnson, TP 26,123 (RHC Nov. 1, 2002) at 4 (citing Jenkins, TP 24,487; Turner v.

Ellison, TP 21,160 (RHC Mar. 22, 1990)). The Commission has applied an exception to this general rule when a party files a notice of appeal and moves the Commission to vacate a default judgment, because the party did not receive notice of the hearing.

Jenkins, TP 24,487 at 4; John's Props. v. Hilliard, TPs 22,269 & 21,116 (RHC June 24, 1993).

When determining the issue of standing, the Commission's review is limited to the issues raised by the appellant in the notice of appeal.³ An exception exists when the appellant defaulted on the lower judgment as a result of not receiving proper notice.

Syndor, TP 26,123 at 4. However, the appellant's Notice of Appeal must timely raise this issue for it to be considered by the Commission. 14 DCMR § 3807.4 (2004). The Tenant's notice of appeal contained no reference to the Tenant's failure to appear at the OAH hearing, nor the resulting default judgment. In the notice of appeal, the Tenant recounted his interaction with the Housing Provider, the Housing Provider's sister and inspectors from DCRA.⁴ The Tenant did not raise an appeal issue regarding the default judgment, and he did not include a motion to vacate the default judgment in his notice of appeal.

Additionally, the Tenant failed to raise or apply the factors enunciated by the District of Columbia Court of Appeals (DCCA) in Radwan v. D.C. Rental Hous. Comm'n, 683 A.2d 478 (D.C. 1996), when a party subject to a default judgment requests that an agency set aside the judgment. The factors enumerated by the DCCA are, "(1)

³ The applicable regulation, 14 DCMR § 3807.4 (2004), provides in relevant part: "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error."

⁴ The Commission's regulation, 14 DCMR § 3802.5(b) (2004), provides, that a notice of appeal shall contain "... a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator."

whether the movant had actual notice of the proceeding; (2) whether he acted in good faith; (3) whether the moving party acted promptly; and, (4) whether a *prima facie* adequate defense was presented.” Radwan, 683 A.2d at 481 (quoting Dunn v. Profitt, 408 A.2d 991, 993 (D.C. 1979)). In this case, the Tenant made no request to vacate the default before the Commission.

During the September 11, 2007, appellate hearing before the Commission (Knight-Bey v. Henderson, RH-TP-07-28,888 (RHC Hearing CD, Sept. 11, 2007)), the Tenant acknowledged receipt of OAH’s notice of the May 31, 2007, OAH hearing. The Tenant admitted receipt of the notice, but then stated that he did not appear at the OAH hearing because he received a promise from the Housing Provider that any harassment from the Housing Provider would cease and that the repairs complained of in his Tenant Petition would be made. Knight-Bey, RH-TP-07-28,888 (RHC Hearing CD, Sept. 11, 2007).

The Commission has previously held that, “[i]t is well-established that a party who fails to appear at an evidentiary hearing before the Rent Administrator generally lacks standing to appeal from the decision which flows from that hearing.” Sellers v. Lawson, RH-TP-08-29,437 (RHC Nov. 16, 2012); Tillman v. Reed, RH-TP-08-29,136 (RHC Sept. 18, 2012); Sydnor, TP 26,123 at 4 (*quoting* Wofford v. Willoughby Real Estate, HP 10,687 (RHC Apr. 1, 1987) at 2). See also, De Levay v. D.C. Rental Hous. Comm’n, 411 A.2d 354 (D.C. 1980). Additionally, when a party fails to appear before the Rent Administrator (or OAH) after being duly noticed of a hearing, the Commission cannot review the merits of the appeal. Shamma v Cafritz Co., TP 28,720 (RHC June 1, 2007); Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000); John's Props., TP

22,269 and TP 21,116 at 5. When a party who has not participated in the hearing below appeals the merits of the decision, the Commission is compelled to dismiss the appeal on the merits, because the party lacks standing. See Sydnor, TP 26,123; Jenkins, TP 24,487; see also Wofford, HP 10,687 (hearing examiner's decision affirmed because the defaulting housing provider lacked standing to challenge the merits on appeal).

In the instant case, the Tenant, who received notice of the OAH hearing and failed to appear, filed an appeal challenging the merits of the ALJ's final order. Because the Tenant did not appear at the OAH adjudicatory hearing, he is not an aggrieved party, and he therefore lacked standing to challenge the results on appeal. See, e.g., De Levay, 411 A.2d at 360. Accordingly, the Commission cannot review the merits of the Tenant's appeal and it is dismissed.

V. HOUSING PROVIDER'S CROSS-APPEAL

On July 18, 2007, the Housing Provider filed a notice of cross-appeal in the Commission, the cross-appeal stated:

I did not receive a copy of the Final Order until I came into the Rental Housing Commission 7/18/07. [sic]

The address of the housing provider is incorrect on the final order.

Housing Provider's Notice of Cross-Appeal at 1.

At the appellate hearing before the Commission, the Housing Provider's representative, his sister, Greta Al Amin, argued that her brother, the Housing Provider, Lynn Henderson, did not receive a Notice of Hearing for the May 31, 2007, OAH hearing. Knight-Bey, RH-TP-07-28,888 (RHC Hearing CD, Sept. 11, 2007). The Housing Provider's representative stated that the address of the Housing Accommodation

in the Tenant's Petition, 2808 Gainesville Street, S.E., Washington, D.C., 20020, is not the Housing Provider's address. Id.

The Commission's review of the record reflects that the TP submitted by the Tenant contains the following address for the Housing Provider: Lynn Henderson, 2808 Gainesville Street, S.E., Washington, D.C., 20020, the same address as the Housing Accommodation. Record (R.) at 17. The record⁵ also contains a copy of a lease signed by both the Tenant and Housing Provider. R. at 1-6. The lease indicates that the Housing Provider listed his address as 10305 Daystar Court, Columbia, MD., 21044.

The OAH issued a Case Management Order (CMO) on May 1, 2007, which notified the Housing Provider and Tenant that a hearing on the TP would be held on May 31, 2007.⁶ The record further reflects that the CMO was sent to the Housing Provider at the address provided by the Tenant in his petition, that is, "Lynn Henderson, 2808 Gainesville Street, S.E., Washington, D.C., 20020." (R.) at 17. The Certificate of Service on ALJ Wellner's order reflects it was sent to the address provided by the Tenant, "Lynn Henderson, 2808 Gainesville Street, S.E., Washington, D.C., 20020." R. at 25. The record contains a United States Postal Service (USPS) receipt confirming that the CMO was delivered by Priority Mail to: Lynn Henderson, 2808 Gainesville Street, S.E., Washington, D.C., 20020 on May 2, 2007. R. at 22.

D. C. OFFICIAL CODE § 2-509(a) (2001) states:

In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved.

⁵ The lease, which was signed by both parties on May 2, 2004, was attached to the Tenant's Petition.

⁶ The OAH rule, 1 DCMR § 2923.1 (2004), provided, "[i]f a hearing is timely requested by any party, the [OAH]...shall send notice of the time and place of the hearing by certified mail or other form of which assures delivery at least 15 days before the commencement of the hearing

In Ungar v. D.C. Rental Hous. Comm'n, 535 A.2d 887, 890 (D.C. 1987), the DCCA stated notice must be strictly adhered to, since issues with the potential to adversely affect either other tenants or the landlord may lurk initially undetected in the tenant's petition. The failure to give proper notice is a violation of due process. A hearing begins with notice of the proposed action and the grounds asserted for it. MPM Mgmt v. Perla, TP 27,190 (RHC Sept. 29, 2004); see Kenneth Culp Davis and Richard J. Pierce, Jr., Administrative Law Treatise, § 9.5, (3rd ed.) at p. 47.

After a tenant petition is filed, alleging that a housing provider has violated the Act, the housing provider is entitled to notice of hearing, the opportunity to present rebuttal evidence, and the opportunity to contest the claims asserted by the tenant. See Borger Mgmt., Inc. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009). Absent a properly served hearing notice, the Housing Provider was deprived of the opportunity to assert his legal right to engage in an examination and cross-examination of the Tenant and of the evidence presented, and to introduce evidence in defense of any claims raised by the Tenant. See Ammerman v. D.C. Rental Accommodations Comm'n., 375 A.2d 1060, 1062 (D.C. 1977).

The Housing Provider was not afforded proper notice as required by the OAH regulations and the principle of due process of law. Parkwell Assocs. v. Bikoy, TP 24, 383 (RHC Dec. 10, 1999); Brown v. Samuels, TP 22,587 (RHC Sept. 17, 1997). "An administrative agency's power to impose sanctions extends only to those parties before the agency who have been afforded the required procedural guarantees with respect to the agency's proceedings." Ammerman, 375 A.2d at 1062.

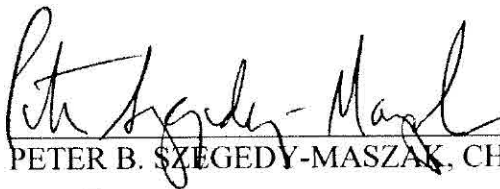
The substantial evidence of record indicates that the Housing Provider did not receive actual notice of the May 31, 2007 hearing. The record reflects first, that OAH failed to notify the Housing Provider at his address of record and second, that the address used by OAH, which was supplied by the Tenant, was incorrect, as the Tenant was required to provide OAH with the proper address of the Housing Provider.

Ordinarily, the failure to provide proper notice to the adverse party in a tenant petition would require the Commission to remand the petition for a hearing de novo. See Parkwell Assocs., TP 24, 383 at 10. However, in the instant case, because the Tenant, as the proponent of the petition,⁷ received proper notice and failed to appear without good cause, his appeal is dismissed. See, supra at 7. The Housing Provider's issues on appeal are therefore moot.

VI. CONCLUSION

Accordingly, the Tenant's appeal in RH-TP-07-28,888, is dismissed. As a result of the dismissal of the Tenant's appeal, the issues raised by the Housing Provider are moot.

SO ORDERED


PETER B. SZEGEDY-MASZAK, CHAIRMAN


RONALD A. YOUNG, COMMISSIONER

⁷ The applicable statute, D.C. OFFICIAL CODE § 2-509 (b) (2001), provides, [i]n contested cases, except as may otherwise be provided by law, ... the proponent of a rule or order shall have the burden of proof."

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

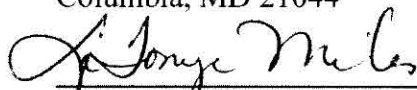
D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reissued Decision and Order in **RH-TP-07-28,888** was mailed postage prepaid by first-class mail this 8th day of **January, 2013**, to:

Vernon Knight-Bey
2808 Gainesville Street, S.E.
Unit 2
Washington, D.C. 20020

Lynn Henderson
c/o Greta Al Amin
10305 Daystar Court
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LaTonya Miles
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